IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2145 OF 2007.

The United India Insurance Co Ltd ...Appellant
Versus
Smt Taramati Harichandra Mungekar & Ors....Respondents

Shri H.G.Misar for the Appellant.
Shri S.P.Thorat for the Respondent No.2.

CORAM : ABHAY S.OKA, J.
DATED : 03rd December, 2007.

P.C.:

1. Heard advocates appearing for the parties. The appeal is by the insurer of the vehicle involved in the accident. The Claim Petition filed by the first respondent under section 166 of the Motor Vehicles Act, 1988 has been partly allowed by the Tribunal.

2. According to the case of the first respondent when she was walking along Dr B.A.Road at Lalbaug with proper care and caution, a tempo insured with the appellant came in great speed and knocked down the first respondent as a result of which she suffered injuries. The Tribunal held that the accident occurred due to rash and negligent driving of the driver of the offending motor tempo. The Tribunal awarded compensation of Rs.50,000/-.

3. The only defence of the appellant-insurer was that though a cheque was issued by the insured in favour of the appellant towards premium amount and though

policy was issued, the said cheque was dishonoured and therefore, there was no valid policy of insurance on the date of accident. According to the case of the first respondent the policy was valid from 22nd March, 1995 to 21st March, 1996. The cheque issued towards premium was dishonoured on 31st March, 1995 and according to the case of the appellant the said fact was duly communicated to the insured by letter dated 21st March, 1995 and to the R.T.O by letter dated 05th April, 1995.

4. Perusal of the judgment shows that there is a finding recorded by the Tribunal that no evidence was led by appellant to show that the cheque was dishonoured. Apart from the said finding, the law laid down by the Apex Court in the case of New India Assurance Company Ltd Vs. Rula & Ors (2003 (3) Supreme Court Cases Page 195) is that even in the case of cancellation of policy as a result of dishonour of the cheque issued towards premium, the rights accrued in favour of the third party prior to cancellation of the policy would remain unaffected and the insurance company will be liable in so far as the third parties are concerned. In view of the settled position of law, the learned member of the Tribunal was justified in over-rulling the objection raised by the appellant. There is no error in the impugned judgment and award. Appeal is accordingly dismissed.

JUDGE